

62:01:03:04. Independent status of the surviving spouse benefit if the member was retired or of retirement age. The benefit payable pursuant to ~~SDCL 3-12-94~~ to a surviving spouse is an independent benefit belonging to the surviving spouse for the purpose of administering an existing qualified domestic relations order.

Source: 34 SDR 297, effective June 2, 2008; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-94, 3-12-97, 3-12-115.

CHAPTER 62:01:07

ADMINISTRATION

Section

- 62:01:07:01 Secretary to board -- Filing.
- 62:01:07:02 Inspection and correction of files.
- 62:01:07:03 Waiver of privilege.
- 62:01:07:04 Authorized agents.
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- 62:01:07:06 Beneficiary designated by qualified domestic relations order.
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- 62:01:07:08 Repealed.
- 62:01:07:09 Lump-sum payments subsequent to annuity payments.
- 62:01:07:09.01 Opportunity to rescind election of annuity payment option -- Overpayments.

62:01:07:09.02 Rollover of lump-sum distribution by inactive member.

62:01:07:10 Rollover of beneficiary payment by surviving spouse or other beneficiary.

62:01:07:11 ~~Elected official's period of participation -- Notice of nonparticipation or participation -- Presumption -- Appointed official. Repealed.~~

62:01:07:12 ~~Member repayment~~ Repayment of overpayments -- Options -- Interest -- Delayed repayment -- Failure ~~by member~~ to select an option -- ~~System~~ Required notice and ~~member understanding~~ presumption.

62:01:07:13 Administration of additional survivor protection contributions and coverage.

62:01:07:11. Elected official's period of participation -- Notice of nonparticipation or participation -- Presumption -- Appointed official. ~~If an elected official chooses to participate in the system pursuant to SDCL 3-12-64, the official shall continue participation until the completion of the official's term of office. If the official is reelected, for a period of 90 days after the reelection the official again has a choice whether to continue participation in the system. If the official chooses to discontinue active membership in the system, the official shall so notify the system by filing a system termination form within the 90-day period. If an official so files a termination form, any employee and employer contributions made during the 90-day period on behalf of the official shall be returned to the employer as contributions in error. An official may continue active membership by filing a new system enrollment form. Failure to file either form within the 90-day period shall be deemed to be an election by the official to continue active participation in the system. An individual appointed to fill a position that normally is elected shall be treated in the same manner as an elected official by the system. Repealed.~~

Source: 33 SDR 212, effective June 4, 2007.

General Authority: SDCL ~~3-12-58~~.

~~Law Implemented: SDCL 3-12-64.~~

62:01:07:12. Member repayment Repayment of overpayments -- Options -- Interest --

Delayed repayment -- Failure by member to select an option -- System Required notice and member understanding presumption. A member required to repay an overpayment of benefits pursuant to SDCL ~~3-12-114~~ may choose to make the repayment by an actuarial equivalent reduction in monthly benefits. If the member does not have a spouse, the reduction shall continue for the member's lifetime. If the member has a spouse, the reduction shall reduce both the member's monthly benefits and the surviving spouse's monthly benefits and shall continue for both the member's and the surviving spouse's lifetimes.

~~—— In the alternative, a member required to repay an overpayment of benefits pursuant to SDCL 3-12-114 may choose to make immediate repayment in a lump sum from other funds or may choose to make repayment by monthly benefit reductions over a period not to exceed three years. Repayment shall include interest at the assumed rate of return, unless the overpayment is due to a system error, in which case the executive director may absolve any interest accrual.~~

~~If a member's repayment is delayed for more than three months, interest on the overpayment amount shall accrue during the period of delay at the system's assumed rate of return, unless the overpayment is due to a system error, in which case the executive director may absolve any interest accrual.~~

Any member required to repay an overpayment of benefits may choose one of the following repayment methods:

- (1) Immediate repayment in a lump-sum from other funds;

- (2) Repayment by monthly installments over a period not to exceed three years, including interest at the system's assumed rate of return;
- (3) Repayment by monthly benefit reductions over a period not to exceed three years, including interest at the system's assumed rate of return; or
- (4) Repayment by an actuarial equivalent reduction in monthly benefits.
 - (a) If the member is a foundation member and does not have a spouse, the reduction shall continue for the member's lifetime. If the member is a foundation member with a potential surviving spouse benefit payable, the reduction shall reduce both the member's monthly benefits and the surviving spouse's monthly benefits and shall continue for both the member's and the surviving spouse's lifetimes.
 - (b) If the member is a generational member and elected a single life benefit, the reduction shall continue for the member's lifetime. If the member is a generational member with a joint and survivor benefit payable, the reduction shall reduce both the member's monthly benefits and the surviving spouse's monthly benefits and shall continue for both the member's and the surviving spouse's lifetimes.

If a member required to repay an overpayment does not choose a repayment option within two months after being given notice of the overpayment, the member is deemed to have chosen to make repayment by an actuarial equivalent reduction in monthly benefits ~~as outlined in this section~~. If repayment is pursuant to an actuarial equivalent reduction by either the member's choice or the member's failure to choose a repayment option, system staff shall inform the member that the reduction is unlikely to result in repayment of the exact amount of the overpayment, plus interest if appropriate, and the member is presumed to so understand.

Any person other than a member who is required to repay an overpayment of benefits may choose one of the following repayment methods, as applicable:

- (1) Immediate repayment in a lump-sum from other funds;
- (2) Repayment by monthly installments over a period not to exceed three years, including interest at the system's assumed rate of return;
- (3) Repayment by monthly benefit reductions over a period not to exceed three years, including interest at the system's assumed rate of return; or
- (4) Repayment by an actuarial equivalent reduction in monthly benefits that shall continue as long as the benefit is paid.

If the person required to repay an overpayment is receiving a benefit from the system and does not choose a repayment option within two months after being given notice of the overpayment, the person is deemed to have chosen to make repayment by an actuarial equivalent reduction in monthly benefits. If repayment is pursuant to an actuarial equivalent reduction by either the person's choice or the person's failure to choose a repayment option, system staff shall inform the person that the reduction is unlikely to result in repayment of the exact amount of the overpayment, plus interest if appropriate, and the person is presumed to so understand.

In all cases, if repayment is delayed for more than three months, interest on the overpayment amount shall accrue during the period of delay at the system's assumed rate of return. If any overpayment is due to a system error, the executive director may absolve any interest accrual.

Source: 36 SDR 21, effective August 17, 2009; SL 2016, ch 31, § 86, effective July 1, 2016.

General Authority: SDCL 3-12-58.

Law Implemented: SDCL 3-12-114.

62:01:05:13. Results of election. The board shall certify the results of the election at the first board meeting after ballot counting pursuant to § 62:01:05:12 is completed. However, the executive director shall notify all the candidates and the members of the board of the tentative election results within three business days after the ballot counting is completed. No person may disclose the tentative election results to the public until after the board certifies the results. If no election is required, the board shall declare the nominee elected.

Source: 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:13, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005; SL 2016, ch 31, § 76, effective July 1, 2016; 43 SDR 57, effective October 17, 2016.

General Authority: SDCL [3-12-58](#).

Law Implemented: SDCL [3-12-49](#).

62:01:08:01. Maximum annual benefit. Annual benefits payable to a member may not exceed ~~\$160,000~~ the amount provided in § 415(b) of the Internal Revenue Code, as indexed pursuant to § 415(d)(1) of the Internal Revenue Code.

Source: 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002; 39 SDR 227, effective July 1, 2013.

General Authority: SDCL [3-12-89.1](#).

Law Implemented: SDCL [3-12-89.1](#).

62:03:01:01. Definitions. In addition to the terms defined in SDCL 3-13-55, terms used in this article mean:

(1) "Account," the record for each participant reflecting the amount of the participant's deferrals, allocated investment gains and losses, and administrative charges against those amounts;

(2) "Accounting date," the date on which an investment is valued and the total investment return is allocated to a participant's account;

(3) "Executive Director," the executive director of the South Dakota Retirement System as provided in SDCL 3-12-55;

(4) "Automatic enrollee," a person who becomes an employee of an automatic enrollment unit;

(5) "Automatic enrollment unit," any unit of state or local government that participates in the system and whose leadership chooses to extend the automatic enrollment provisions of chapter 62:03:07 to the unit's employees pursuant to § 62:03:07:01;

(6) "Board," the Board of Trustees of the South Dakota Retirement System;

(7) "Compensation," total cash remuneration paid to an employee by a participating employer for personal services rendered to the participating employer;

(8) "Deferred compensation" or "deferrals," the portion of a participant's compensation deferred pursuant to this plan, including pre-tax contributions, designated Roth contributions, or both;

(9) "Dependent," a participant's qualifying child or a participant's qualifying relative, each as defined in § 152 of the Internal Revenue Code;

(10) "Designated Roth contributions," a participant's deferred compensation that is includable in the participant's gross income at the time deferred and has been irrevocably designated as Roth contributions by the participant in accordance with federal law;

(11) "Employee," a person providing services to the state or a political subdivision of the state for which compensation is paid by a participating employer, including employees of any agency, board, or commission of the state and its political subdivisions; members of the Legislature; members of any board or commission of the state and any of its political subdivisions; and persons furnishing services to the state or any political subdivision pursuant to a contract as independent contractors;

(12) "Includible compensation," the compensation remaining after subtracting any pre-tax contributions under the plan;

(13) "Normal retirement date," the date a participant retires pursuant to a participating employer's retirement plan without reduced benefits;

(14) "Participant," an employee of a participating employer who elects to participate in the plan;

(15) "Participating employer," the state of South Dakota, any of its agencies, boards, and commissions, and any political subdivision as identified in § 62:03:02:01;

(16) "Participation agreement," the written agreement between employer and employee under which compensation is deferred pursuant to this plan;

(17) "Pre-tax contributions," a participant's deferred compensation that is not includable in the participant's gross income at the time deferred;

(18) "Severance from employment," the complete severance of a participant's employment relationship with a participating employer as set out in § 457(d)(1)(A)(ii) of the code;

(18A) "System," the South Dakota Retirement System created in SDCL chapter 3-12;

(19) "Third-party administrator," a person who, pursuant to contract, handles administration of the plan on behalf of the board and the administrator;

(20) "Unforeseeable emergency," severe financial hardship to a participant resulting from an illness or accident of the participant, of a dependent of the participant, or of a designated beneficiary of the participant, funeral expenses of a dependent of the participant or of a designated beneficiary of the participant, severe loss of income that is completely beyond the control of the participant, loss of the participant's property due to casualty, imminent foreclosure or eviction from a participant's primary residence, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant; and

(21) "Vendor," a person or organization selected by the state investment officer to provide investment or insurance products to the plan.

Source: 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002; 33 SDR 212, effective June 4, 2007; 35 SDR 82, effective October 22, 2008; 39 SDR 227, effective July 1, 2013; 41 SDR 219, effective July 1, 2015; SL 2016, ch 31, § 88, effective July 1, 2016.

General Authority: SDCL 3-13-54, 3-13-57.

Law Implemented: SDCL 3-13-49, 3-13-57.